

§ 779.119

out-of-State stores and such employees as traveling auditors, inventory men, window display men, etc., who regularly travel from State to State in the performance of their duties are covered under the Act. (See *Mitchell v. Kroger Co.*, 248 F. 2d 935 (CA-8).)

§ 779.119 Exempt occupations.

Of course, it should be noted that although employees may be engaged in commerce or in the production of goods for commerce within the meaning of the Act, they may be exempt from the Act's minimum wage or overtime provisions (or both). For a complete list of such exemptions the Act should be consulted. Those exemptions, however, which are of particular interest to employers and employees in the retail field are discussed in subparts D, E, and F of this part.

Subpart C—Employment to Which the Act May Apply; Enterprise Coverage

ENTERPRISE; THE BUSINESS UNIT

§ 779.200 Coverage expanded by 1961 and 1966 amendments.

The 1961 amendments for the first time since the enactment of the Fair Labor Standards Act of 1938 provided that all employees in a particular business unit are covered by the Act. Prior to the 1961 amendments each employee's coverage depended on whether that employee's activities were in commerce or constituted the production of goods for commerce. All employees employed in an "enterprise" described in section 3(s)(1) through (5) of the Act as it was amended in 1961 and section 3(s)(1) through (4) of the Act as amended in 1966 are also covered. Thus, it is necessary to consider the meaning of the term "enterprise" as used in the Act.

§ 779.201 The place of the term "enterprise" in the Act.

The term "enterprise" is defined in section 3(r) of the Act and, wherever used in the Act, is governed by this definition. (§ 779.21(a) provides that portion of the definition of "enterprise" which is pertinent with respect to retail and service enterprises.) The term

29 CFR Ch. V (7-1-14 Edition)

is a key in determining the applicability of the Act to these businesses. The "enterprise" is the unit for determining whether the conditions of section 3(s)(1) through (5) of the prior Act and section 3(s)(1) through (4) of the amended Act, including, where applicable, the requisite dollar volume are met. The "enterprise" is also the unit for determining which employees not individually covered by the Act are entitled to the minimum wage, overtime, and equal pay benefits, and to the child labor protection, under sections 6, 7, and 12 of the Act. In general, if the "enterprise" comes within any of the categories described in section 3(s)(1) through (5) of the prior Act or section 3(s)(1) through (4) of the amended Act, all employees employed in the "enterprise" are covered by the Act and, regardless of their duties, are entitled to the Act's benefits unless a specific exemption applies.

§ 779.202 Basic concepts of definition.

Under the definition, the "enterprise" consists of "the related activities performed * * * for a common business purpose." All of the activities comprising the enterprise must be "related." Activities serving a single business purpose may be related, although different, but other activities which are not related are not included in the enterprise. The definition makes clear that the enterprise includes all such related activities which are performed through "unified operation" or "common control." This is true even if they are performed by more than one person, or in more than one establishment, or by more than one corporate or other organizational unit. Specifically included, as a part of the enterprise, are departments of an establishment operated through leasing arrangements. On the other hand, the definition excludes from the "enterprise" activities only performed "for" the enterprise rather than as a part of it by an independent contractor even if they are related to the activities of the enterprise. Also, it makes clear that a truly independent retail or service establishment does not become a part of a larger enterprise merely because it enters